

SHOULD CHINA'S ARTIFICIAL INTELLIGENCE LEGISLATION FOCUS ON ADDITION OR SUBTRACTION

*Zhou Hanhua**

In March 2011, *Wu Bangguo*, then Chairman of the Standing Committee of the 11th National People's Congress (NPC), announced that the socialist legal system with Chinese characteristics had been established, which was an important milestone in the history of advancing socialist democracy and the rule of law in China. The Fourth Plenary Session of the 18th Central Committee of the Communist Party of China set the overall goal of comprehensively advancing law-based governance as 'establishing a system of socialist rule of law with Chinese characteristics and building a country of socialist rule of law', marking a transition from the construction of a legal system to the development of a rule of law system. In this new phase, legislation is merely one component of the broader construction of the rule of law system. We should take coordinated steps to enact, revise, abolish, interpret, and codify laws, adhere to the unity of the timing, extent and efficiency, and ensure that legislation accurately reflects the requirements of economic and social development, becoming the inherent requirements for improving the quality of legislation. It is necessity to address the relationship between the enactment of new laws (addition) and the revision, abolition, interpretation, and codification of existing laws (subtraction), with the role of 'subtraction' becoming increasingly significant.

Based on the recent legislation plan in China, it is evident that the number of revised laws has far exceeded that of newly enacted laws. According to the *2024 Legislative Work Plan of the Standing Committee of the National People's Congress*, there are 16 draft laws submitted for deliberation, evenly divided into 8 newly enacted laws and 8 revised laws. Among the 23 draft laws submitted for initial deliberation, there is 1 codified law, 6 newly enacted laws, and 16 revised laws. In addition, the Standing Committee of the National People's Congress has decided to 'carry out overhaul around the major decisions and deployments of the Party Central Committee and the implementation of significant laws, and explore to overhaul laws'. It also aims to 'implement the procedural mechanism for

* Researcher at the Institute of Law of Chinese Academy of Social Sciences.

constitutional interpretation, offering explanatory opinions on the meaning of relevant constitutional provisions during constitutionality review'. Furthermore, efforts will be made to 'strengthen the record and review system for normative documents and its capacity building, resolutely correct and repeal normative documents that violate the *Constitution* and laws, and uphold the unity, sanctity, and authority of the law'.

According to the *2024 Legislative Work Plan of the State Council*, there are a total of 21 draft laws submitted to the Standing Committee of the National People's Congress for deliberation, including 8 newly enacted laws and 13 revised laws. Additionally, the State Council emphasizes 'taking coordinated steps to enact, revise, abolish and interpret laws', 'adhering to the combination of comprehensive and special overhaul and promoting the overhaul of laws and regulations in a robust and orderly manner', and 'intensifying efforts to review and rectify errors to enhance the quality and efficiency of the file and review'.

In the new phase of developing the rule of law system in China, we need to first clarify the primary approach, in order to advance the rule of law for artificial intelligence. Should the focus primarily be on 'addition' or 'subtraction'? The 'addition' approach involves enacting a unified Artificial Intelligence (AI) Law, whereas the 'subtraction' approach entails a systematic effort, involving the interpretation, amendment, abolition, and necessary codification of numerous existing laws. In fact, exploring the path for AI legal governance also holds general significance for other areas of China's legal development. The academic community should study critical issues such as the timeliness, similarities and differences, costs and benefits, and the balance between legislation and enforcement in both approaches, thereby providing academic support for the construction of the rule of law system.

In the national legislation plan, two distinct approaches exist: drafting a unified law or issuing a legislative decision. The State Council's legislative work plans for 2023 and 2024 explicitly include the draft AI Law as a 'draft law submitted to the Standing Committee of the National People's Congress for deliberation'. In the 13th NPC Standing Committee's legislative plan, AI legislation was included in the third category of legislation, indicating that the conditions for its formulation were not yet fully met and required further research and demonstration. The legislative plan of the 14th NPC Standing Committee explicitly mentions the timely scheduling of deliberations on laws or decisions aimed at 'promoting scientific and technological innovation and

the healthy development of AI' in the first category of legislation. Decisions also constitute an effective form of legislation. However, the implementation extends beyond the mere formulation of new regulations. Under the guidance of such decisions, systematic overhaul of laws and regulations are conducted, which essentially falls within the scope of subtraction.

From the perspectives of coordination and enforceability within the legal system, addition approaches resemble drawing on a blank sheet of paper, where introducing new regulations is relatively straightforward. In contrast, subtraction approaches are akin to performing intricate work within a confined space, requiring careful handling of the interplay between different norms, which is significantly more challenging. In our system, including academic circles, there is a general preference for addition approaches, which align with the philosophy that 'flame runs high if everyone adds wood to it'. Subtraction approaches, however, are often seen as labor-intensive and thankless tasks that involve meticulous and painstaking efforts, offering limited visibility in terms of key performance indicators. Addition efforts primarily focus on legislation, which will continue to overlap, thereby complicating compliance and undermining enforceability. Subtraction efforts, on the other hand, emphasize the implementation of laws, aiming to gradually build synergy, reduce compliance difficulties, and enhance the enforceability of rules. This distinction is just one aspect of the differences between addition and subtraction approaches; there are many others, which are worthy of further exploration.

By examining the history of the rapid development of the internet and AI industries, we can observe that the emergence of the platform economy and the advancement of large-scale models occurred in succession. These developments stemmed from the process of streamlining administration and delegating power, which is characterized by subtraction. At present, the EU is the only entity that has enacted the *AI Act*. Moreover, the EU's legislative approach is highly specific to its own context and lacks universal applicability. Even EU experts generally acknowledge that this approach is unlikely to effectively promote the development of the AI industry within the region.

China's reform and opening-up, alongside the rapid development of the internet industry, has yielded invaluable experience in areas such as institutional reform, personnel reallocation, streamlining administrative procedures, and the relationship between reform and the rule of law. These

are precious and should not be forgotten. Streamlining administration and delegating power while unleashing the vitality and creativity of market entities and the whole society have been fundamental to the success of China's development since the reform and opening-up.

Currently, to promote high-quality development and boost the confidence of market entities, various industries are broadly implementing subtraction strategies. For instance, in the real estate sector, restrictions on purchases, sales, and prices, as well as distinctions between ordinary and non-ordinary residential properties, are being lifted. In the platform economy, policies are being strengthened to enhance the supply of data elements, promote the orderly cross-border flow of data in accordance with the law, and enhance the consistency of platform economy policies with macroeconomic policies. The AI sector should also learn from the experience of these industries and accelerate the pace of subtraction.

If we analyze the legal obstacles facing the AI development in China, the following issues can be identified. First, legal obstacles in the pre-training stage include the lack of clear authorization for the principle of large-scale training data and of provisions on government data openness and related interoperability in the *Copyright Law of China*. Although the *Personal Information Protection Law* clearly stipulates that 'the personal information disclosed by the individual himself or other legally disclosed personal information of the individual is reasonably processed in accordance with this Law', there is uncertainty in how to apply this provision in practice. In the *Sina Weibo v. Maimai Unfair Competition Dispute* with a very wide impact, the triple authorization principle applied in the case may impact the effective crawling and utilization of training data. Second, the legal obstacles in the application stage include fundamental issues that must be addressed, such as how to characterize AI-generated outputs, whether they should enjoy copyright protection, who should hold such rights if protected, how to allocate liability in cases of infringement, and how to minimize potential harms.

The legal obstacles encountered in these two phases span across various branches of law. Most of these challenges can only be addressed through the amendment, abolition and interpretation of the existing laws. To advance China's AI industry and digital economy, it is essential to gather wisdom from all aspects, build an effective system and mechanism, and start with subtraction rather than addition. First, it is necessary to conduct an overhaul

of existing laws, regulations, and related policy documents, and to amend or repeal provisions that are inconsistent with the development of the AI industry. Second, on the basis of reducing regulations, it is imperative to alter the current situation of ‘many dragons governing the water’ prevalent in some fields by promoting institutional reforms to reduce redundant agencies. Finally, by streamlining administration, a large number of staff and expenditure can be saved, the staff can be reduced, administrative efficiency can be improved, government functions can be transformed, and the enthusiasm and creativity of all parties can be released and mobilized.

(Translated and Edited by Li Jiesi)